

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1674 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
No
2. To be referred to the Reporter or not? No :
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
No
5. Whether it is to be circulated to the Civil Judge? No :

MANOJ COLD DRINKS

Versus

STATE OF GUJARAT

Appearance:

MR SV RAJU for Petitioner

Mr.Uday BhaTTT, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 26/11/1999

ORAL JUDGEMENT

1. The petitioner, through this writ petition under Article 226 of the Constitution of India, has prayed for quashing of communication dated 17.3.1988 as contained in Annexure : E from Section Officer, Social Welfare Department. The challenge to this communication arises out of the following facts :

2. The petitioner is an Agent for Gujarat State in Cold Drinks (Carbonated aerated soda) manufactured at Jodhpur and marked under the brand name "Fruit Beer". According to the petitioner this cold drink is non-alcoholic soft drink. Several Reports of Analysis were obtained by the petitioner where total absence of alcoholic contents were reported by various laboratories. Three such reports have been annexed with the writ petition collectively vide Annexure : A. The petitioner also obtained licence for selling this cold drink from Ahmedabad Municipal Corporation for the year 1987-88 and thereafter as well. According to the petitioner under no provision of the Bombay Prohibition Act manufacture or sale of such cold drink is prohibited and as such even if prohibition policy is holding field in the State of Gujarat sale of such cold drink could not be prohibited under the impugned communication. The petitioner, being illiterate, under ignorance and wrong advice applied to the Secretary, Prohibition Department, Gandhinagar on 30.4.1987 for permission to sell the aforesaid "fruit beer" in the State of Gujarat. In the said letter it was specifically mentioned that the soft drink "fruit beer" is a cold drink and it does not contain any alcoholic contents. No reply to this letter was given by the department for a long time and after about one year the petitioner received the impugned communication dated 17.3.1988 where the permission was refused. It is, therefore, this petition challenging the aforesaid communication.

3. Learned Counsel for the petitioner and Shri Uday Bhatt, learned A.G.P. have been heard. This petition was admitted 4.4.1988. No counter Affidavit has been filed till date. On 18.1.1989 the Court ordered that final hearing be expedited and now after a decade this petition has seen the light of the day inspite of the order of the Court for expeditious final hearing of this writ petition. Since no counter affidavit has been filed by the respondent there is no reason to discredit the reports of the three Laboratories which on different dates examined the contents of the sample "fruit beer" which is being manufactured and sold by the petitioner. The first report is dated 4.7.1988 which is part of Annexure : A, Page : 12. This report shows presence of Carbon dioxide and Sucrose 9.11%, saccharine was found absent so also Ethyl Alcohol and mineral acid. It was certified in the report that the sample was in compliance with the prescribed standard of quality under the prevention of Food Adulteration Act and the Rules. Almost identical Analysis Report was given in the report dated 5.4.1987 where also carbon dioxide and sucrose were

found present. Saccharine, Ethyl Alcohole and mineral acid was found absent. The sample was certified to be conforming to the standard prescribed under the Prevention of Food Adulteration Act and the Rules. No adulteration was found in the third report of 8.10.1987. In face of these reports of the Chemical Analysts it can safely be said that simply because the word "beer" in addition to fruit was mentioned on the lable of the product it could not be said to be "BEER" inasmuch as there was total absence of alcohol or ethyl Alcohol. The impugned communciation does not show what was the material for rejecting the permission applied by the petitioner.

4. The anxiety of the learned A.G.P. has been that since the word "beer" has been used in the lable it is bound to convey to the consumers that the content is definitely containing beer and it will incite the residents of the State of Gujarat to go for purchasing and consuming such drink. However, what has been argued by the learned A.G.P. would have been appreciated if there would have been such indication in the impugned communciation or any counter Affidavit would have been filed to this effect. Since "fruit beer" under consideration did not contain any alcoholic substance incidentally no permission was required by the petitioner and if he under mistake applied for such permission it could not be refused mechanically without affording any opportunity of hearing to the petitioner as to what was the material to treat the contents as "beer" having alcoholic substance.

5. For the reasons stated above the impugned communication, Annexure : E, cannot be sustained. The writ petition therefore succeeds and is hereby allowed. The impugned communication, Annexure : E, is hereby quashed. No order as to costs.

sd/-

Date : November 26, 1999 (D. C. Srivastava, J.)

sas